

**Testimony of
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**Before the
United States House of Representatives
Committee on Agriculture**

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Concerning

H.R. 4200, the “Forest Emergency Recovery and Research Act “

Mr. Chairman and Members of the Agriculture Committee: Thank you for inviting the Sierra Club to testify on the *Forest Emergency Recovery and Research Act*.

Sierra Club, founded in 1892, is America’s oldest grassroots environmental organization. Sierra Club’s purpose is to “explore, enjoy, and protect the wild places of the earth; to practice and promote the responsible use of the earth’s ecosystems and resources; to educate and enlist humanity to protect and restore the quality of the natural and human environments.” As concerned citizens, the Sierra Club’s 750,000 members are committed to securing policies that protect, preserve and restore environmental quality.

The “Forest Emergency Recovery and Research Act”

Sierra Club finds that HR 4200, the *Forest Emergency Recovery and Research Act*, as introduced is more focused on promoting rapid salvage logging than restoring environmental quality that benefits forest ecosystems, the people who use them and the fish and wildlife that depend on them. This bill disregards important protections for clean drinking water and wildlife, and eliminates meaningful environmental analysis and public involvement required by the National Environmental Policy Act (NEPA).

While the approach of the legislation is written in generalities that reference “recovery” after fires and other various natural disturbances, the real world examples given for the bill’s development are not to protect aquatic systems, control sedimentation, halt erosion and mass wasting, improve public safety or protect homes and communities. Instead, the emergency situation most claimed as the reason for the proposed legislation is that burned trees are not being logged fast enough. My copy of Webster’s dictionary has several definitions of the word *recovery*. Two definitions of the word *recovery* are “a return to health” and “a regaining of balance or control.” Another definition of the word is “the removal of valuable substances from waste material.” HR 4200 is clearly designed on the idea embodied in the last definition.

If immediate commercial logging of burned areas and other disturbed forests is the main goal of the legislation then we would do well to discuss the significant environmental impacts and burdensome financial costs of salvage logging. Post-fire salvage logging can cause great ecological damage to burned areas by compacting soils and removing much needed organic material. This in turn can increase the amount and duration of topsoil erosion and runoff, which compounds damage to aquatic ecosystems. When heavy ground-based machinery is used the damage is generally greatly increased. The associated loss of organic material due to commercial logging also means that soil will be less able to hold moisture. Post-fire salvage logging also removes trees that

provide shade and this can retard tree regeneration, especially in dry areas or those in higher elevations. Construction of permanent or temporary roads and log landings also damage soils, destroy or alter vegetation and accelerate erosion and runoff. Increased runoff and erosion can significantly alter river hydrology by increasing the frequency and strength of water flows and increasing sediment loads. The change to river channels due to increased sedimentation harms aquatic species from invertebrates to fish. Logging roads and equipment are often the routes by which non-native plant species and pathogens are spread, such as the root fungus that kills Port Orford cedar.

Salvage logging after fires or other disturbances can increase the severity of future fires because of the increase in fuel loads from logging slash and the alteration of the character and condition of other vegetation. Post-fire salvage logging often undermines the effectiveness of rehabilitation activities taken to reduce the impacts of fire suppression and reduces the benefits of any prior work to limit soil erosion and runoff.

Increased salvage logging will likely cause an increased financial burden for American taxpayers. To some there is an economic imperative to log a burned area immediately to realize the economic potential of the available timber. However, a full cost accounting of any salvage logging project or program will reveal that there are larger economic questions than just the potential value of the trees to be had. Many trees may be too small, too damaged or too far from accessible transportation routes to provide much timber value. The transportation costs to mills alone may be more than the value of the trees. The use of heavy machinery or helicopters will increase the costs of operating the project. The marginal value of small and damaged trees can very well cause project planners, or timber fellers, to target large, old trees that are undamaged, alive, outside the prescribed boundaries of the project area, rare species, and generally make up the best habitat components to leave behind. New laws that expedite salvage logging will cause an increase in the logging of the nation's rare old growth and wild forests simply because of the economic incentives at work in the Forest Service and BLM.

When the costs of poorly planned and implemented salvage timber sales exceed the receipts taken in by the agency the taxpayers are required to shoulder the burden for some private enterprise's desire to recoup the economic value of the public's forests. A historical accounting shows that it is quite rare when a federal commercial logging program meets its costs. For example, National Forests in Oregon lost more than \$100 million in 1998. The Siskiyou National Forest spent more than it gained in timber receipts 10 out of 11 years between 1992 and 2002. Those losses were for logging programs that targeted green and *unburned* trees. It will be even more difficult for the agency to demonstrate that it can meet costs and do the careful planning required to protect non-timber goods and services for an increased and expedited post-fire salvage logging program.

The very real economic factors of road construction, maintenance and eventual removal costs, treatment of flammable slash costs, impact to ecosystem services costs and site rehabilitation and replanting costs are compounded with each poorly planned project. The time and resources that the Forest Service and BLM staff spend on harmful and wasteful salvage logging programs divert valuable taxpayer funds that could and should be spent benefiting public safety, fish and wildlife, clean drinking water, recreation and the other goods and services the public wants from their federal public forests. The funding sources outlined in Section 402 of the bill are likely to create more perverse incentives for harmful logging, reduce funding for fire suppression, preparedness, hazardous fuels reduction and community fire planning. The effect will be to trade off citizen safety to produce more salvage timber sales. It is also likely that more funds will even be diverted from needed replanting and restoration work to pay for salvage logging. We should also appreciate the considerable economic losses suffered when ancient forests and wild roadless areas are damaged due to the impacts to ecosystem services and the extraordinary high value the public places on these wild and special places.

The proposed legislation significantly fails by not excluding ancient and wild roadless forests from salvage logging and road construction projects. The protection of these rare forest resources is not only highly beneficial to fish and wildlife, the economy, recreation and water quality but it is one of the most steadily and highly popular federal forest management proposals presented to the public. A public poll conducted in Oregon and Washington by Davis and Hibbits, Inc. show that 75% of the public support protection of old growth forests from logging and other harmful activities. Likewise, over the past seven years no fewer than 18 separate opinion polls have shown strong public support for National Forest conservation and the protection of roadless areas. In April 2001, The Mellman Group wrote:

"There is widespread and overwhelming support for protecting wild areas in national forests from logging, mining, and drilling for oil and gas. A strong majority of voters (67%) favor the Roadless Area Conservation Rule, with 49% saying they favor this policy strongly (19% oppose). Support for this ruling cuts across partisan and regional lines. Seventy-six percent (76%) of Democrats, 66% of independents and even 58% of Republicans support protecting these areas. Similarly support is strong in all regions of the country. Seventy-one percent (71%) of people from the Northeast, 68% of Midwesterners, 65% of Southerners and 64% of those in the West favor the rule to protect pristine national forestlands."

The Theodore Roosevelt Conservation Partnership conducted a poll of licensed U.S. hunters and anglers concerning their knowledge and beliefs about forest management and the value of wild areas. Included in their findings were that 84% of hunters and 86% of anglers supported efforts by sportsmen to keep the remaining roadless areas in National Forests roadless. Even if Congress chooses not to protect America's wild and ancient forests it is hard to dispute the popularity of providing protection.

Section 104(e)(1) of the proposed legislation would remove key protections for threatened and endangered species provided under the Endangered Species Act by allowing the interagency consultation process to be bypassed when using "pre-approved management practices." This provision takes the self-assured position that expedited salvage logging be placed on par with national defense or security emergencies. This provision would allow consultation to take place once the logging has been completed, which greatly reduces the value of consultation for protecting imperiled wildlife. After the conclusion of the near-meaningless consultation, this provision also approves any incidental death of or impacts to threatened and endangered species that may have occurred. The provision provides legal cover starting on the date the Secretary initiated the practice and would "apply to all persons assisting or cooperating with the Secretary in using the practice."

Under a similar provision in Section 104(e)(2) consultation required by the National Historic Preservation Act, Clean Water Act, and other laws could proceed at the same time as the "pre-approved management practice." Through this provision logging would legally continue as historic sites are being destroyed and water sources are impaired until the lower priority of consulting on the impacts occurs. This effectively neuters the role of consultation.

The mandated 30 day limit to determine and start implementation of any "pre-approved management practice" as outlined in Section 104(f) and (g) avoids any meaningful rationale and economic or environmental analysis of the project. This provision combined with other related provisions severely shortchanges public involvement. This provision also makes any quality analysis of site-specific conditions, full accounting costs, alternative actions, or impacts to threatened and endangered species almost impossible.

Congress has given the Forest Service and Bureau of Land Management all of the authority it needs to address natural disasters and the Administration has granted itself several waivers from environmental analysis under

NEPA to complete legitimate forest rehabilitation and recovery after natural events. It is worth noting that the damage caused to forests along the Gulf Coast by Hurricane Katrina has been used as an example of why this type of legislation might be needed. But, the Forest Service is working to treat the affected forests with existing authorities and has specifically not asked for new authorities to deal with the mess created by Katrina. The current situation is that Forest Service employees in the region are so far working to stay within the parameters of established law and are making an exceptional effort to work with and seek the input and advice of environmental advocates. This is a big challenge for the agency to show that one of the greatest natural forest disturbance events in recent US history is being managed entirely within the confines of current forest management laws, while not forgetting that building public trust and goodwill is important.

Lawmakers should be aware that HR 4200 goes far beyond the provisions and reasoning for the Healthy Forests Restoration Act. There is no ecological emergency to log after natural disturbances on America's public forests, which is what this legislation proposes.

The *Forest Emergency Recovery and Research Act* is not a workable approach to restoring damaged fish and wildlife habitat, protecting threatened and endangered species, conducting research or protecting citizens' homes and communities. A stronger scientific and collaborative approach to maintaining the health of our National Forests after natural disturbances can be found in the bi-partisan *National Forests Rehabilitation and Recovery Act of 2005*, HR 3973. This legislation would allow local stakeholders to join together and create sensible long term restoration plans that protect communities from future wildfires, restore fish and wildlife habitat, and safeguard old growth and wild roadless forests from commercial logging.

Poor Analysis and Planning Creates Poor Results

In recent years we have seen a number of salvage logging projects turn out poor results. These poor results are due to the lack of oversight, responsible analysis and the pressure to pursue logging at the cost of all other resource values. Here are some examples that are of concern to Sierra Club members:

High Roberts Timber Sale, Malheur National Forest, Oregon – In the summer of 2002, a light ground fire burned through the Malheur National Forest near the Strawberry Wilderness. In small pockets the fire reached the tops of the trees and scorched their crowns. But for the most part, the fire, known as High Roberts, burned through the understory and left the old growth Ponderosa pine, Grand fir and Western larch to live on with only a little surface damage at their base.

The Forest Service claimed these trees were dead or dying and decided to use a categorical exclusion under the Healthy Forest Initiative to plan a salvage timber sale. The categorical exclusion rule allows salvage logging of dead and dying trees and excludes this kind of salvage project from environmental review or meaningful citizen input. The problem with the project is that the old growth trees at High Roberts were still alive and healthy two years after the fire and they were unlikely to die anytime soon. A 27 year Forest Service veteran realized the project planners had marked all the large green trees well over 21" in diameter to be cut, but ignored trees that were less than 12" in diameter. He understood full well the natural role that fire plays in this landscape and that many trees often survive wildfire. This veteran became a whistleblower in order to question the scientific validity of the Forest Service's decision and publicly complained that the Forest Service had "published a paper without peer review and called it science" in order to justify this timber sale.

When this shoddy analysis was challenged in court by the Cascade Resources Advocacy Group the plaintiffs received a statement in support of their claim from Dr. Bill Ferrell, a professor emeritus from Oregon State

University. Dr. Ferrell is an expert in forest ecology and plant pathology. In his deposition he stated, “It is clear to me that the High Roberts fire was generally of low intensity. Two years after the fire, these trees are showing no ill effects whatsoever from the fire.” The trees he referenced were all marked with blue paint; marked to be logged. Oddly enough, the day before the hearing the Forest Service submitted a brief to the Court that stated Dr. Ferrell had died on November 13, 2004. The Forest Service acknowledged his statements, but suggested that because Dr. Ferrell had died the court should ignore his testimony. However, the day of the hearing Dr. Ferrell was alive and in court. His presence was noted in the court record when the judge said, “The court will take judicial notice that Dr. Ferrell is alive.” The Forest Service zeal to push a salvage logging project was denied and the old growth trees and Dr. Ferrell both continue to live to this day.

Biscuit Timber Sale, Rogue River-Siskiyou National Forest, Oregon – The 350 acre Babyfoot Botanical Area was created in 1966 to protect Brewers’ spruce and other rare plants in the Rogue River-Siskiyou National Forest. After the Biscuit fire the Forest Service planned one of the largest salvage logging timber sales in modern history. The Botanical Reserve, however, was always to be off the table for any timber harvest because of the unique plant diversity in the area. Despite the exceptionally high profile of the Biscuit timber sale and the scrutiny it received from the agency, the public, the media, Administration officials and Members of Congress, somehow the Forest Service mismarked the border of part of the timber sale next to the Botanical Reserve area. The result was that 17 acres of a protected reserve was logged by the Silver Creek Timber Company. (This same company was fined earlier in the year for logging illegally inside the congressionally designated Kalmiopsis Wilderness in 2004 as part of other logging operations.) Conservationists counted over 290 stumps in the Botanical Reserve including one that was three feet in diameter and 234 years old. The “serious mistake” admitted by the agency caused a local newspaper, the Ashland Daily Tidings, to editorialize that this “confirmed that more restraint, public input and independent advisors are needed” when others are asking for less.

In a more recent instance the Forest Service is investigating the illegal logging of green trees within the Wafer timber sale. The Wafer sale is part of the Biscuit timber sale and was planned inside an old growth reserve. According to the Associated Press, the South Coast Lumber Company was only allowed to log dead trees but over 100 live green trees were found logged shortly after the weekend of October 8th.

Bitterroot Burned Area Recovery Project, Bitterroot National Forest, Montana – In 2000 several fires burned across 356,000 acres of forest land in the Bitterroot National Forest that had been heavily logged and roaded over the past forty years. By fall of 2001 the Bitterroot National Forest staff released a “recovery” plan that called for logging 181 million board feet over 46,000 acres. The agency officials made note that the leftover logging slash would increase fire hazards for up to eight years. An out of court settlement allowed logging of 60 million board feet and the logging began. Erosion and sedimentation increased in streams due to heavy truck traffic on poorly maintained roads and in some cases the logging companies were allowed to select the trees they wanted to take. This lack of oversight and guidance led to increased fire risk, erosion on steep slopes, heavy removal of large snags and much public distrust of the Forest Service. While commercial logging went ahead, over \$16 million slated for non-logging restoration and rehabilitation was diverted to pay for firefighting costs of the 2002 fire season. These funds have yet to be replaced so three years into the “recovery” plan about 75% of the critical watershed and road restoration work remains undone but the logging is near finished.

Priorities that Deserve Progress

This proposed legislation is an unfortunate example of misplaced priorities. There are several areas of federal forest management that should be of much higher priority for the Congress than pushing a contentious and harmful salvage logging program.

Protect Homes and Communities First -- Sierra Club believes that the number one priority of the federal fire management program should be to protect homes and communities from threat of wildfire. The research behind the Firewise program has produced solid results that help homeowners and community leaders take concrete action and derive a substantial degree of increased protection. Further, the research of the USFS Fire Research Laboratory proves that fuel reduction 100 to 200 feet around homes and other structures will provide a significant degree of increased safety from a surrounding wildland fire. The Forest Service and BLM should focus fuel reduction near homes and communities regardless of whether the land is federally or non-federally owned. Diverting scarce resources into salvage logging programs instead of working to protect home and communities is a management and legislative decision that citizens cannot afford. While Congress discusses action to increase salvage logging we have to ask: what do these agencies do that is more important than keeping citizens' homes from burning down?

Safeguard Workers Rights and Safety -- A recent series by the Sacramento Bee identified severe abuses of the rights of forestry workers. Many workers do not receive the wages and benefits to which they are entitled and some are maimed or even killed through a lack of simple safety precautions. Sierra Club members and other citizens do not expect their federal public lands to be places where workers are abused and forced to live in squalor.

Sierra Club applauds Chief Bosworth's immediate statement and direction to Forest Service employees to empower them to address these problems. The Chief's action is the type of leadership direction that is needed to confront the more diverse societal concerns of this era of National Forest management. To solve the problems and conditions forestry workers face will require Congressional involvement. The Forest Service can help enforce labor and safety requirements in the woods but the agency also needs strong direction to allow them to refuse contracts to contractors who insist on poor management practices and who abuse workers rights. However, it is up to the Department of Labor to regulate the H-2B guest worker program that brings many forestry workers to the United States. In this the Department of Labor needs strong Congressional direction to: investigate the abuses that occur during the recruitment of the foreign workers in their homelands; ban unscrupulous contractors from receiving federal contracts so that serial violators are not allowed to hide under a new business name; and, require employers and labor contractors who transport forestry workers to provide them with safe transportation. Also, agency budgets for reforestation and restoration should be adequate enough to remove the financial incentives that make the lowest cost the only deciding reason for entering into a particular contract. A well trained, established and experienced workforce will contribute more to the stewardship of our National Forests and other lands than a transient workforce in unsafe and miserable conditions.

Maintain Existing Road System -- The Forest Service faces a massive maintenance backlog on existing forest roads that currently exceeds \$10 billion. Over 380,000 miles of roads have been built for past logging operations but now many receive no annual maintenance. In fact, only 21% meet adequate maintenance objectives. This deteriorating road system will continue to cause public safety and environmental quality issues that affect the millions of citizens and visitors that use their National Forests. A 1997 Congressional Research Service report stated that properly maintaining National Forest roads would reduce the current number of collisions by one-half. Opening up wild roadless areas and old growth forests for logging and new road construction, permanent or temporary, only exacerbates this very serious environmental and financial problem. New laws that allow expedited salvage logging will increase the amount of taxpayer subsidized roads and other timber subsidies. The Forest Service and BLM should fix the existing transportation infrastructure first and decommission unsafe and unneeded roads before creating any new and damaging roads.

Fully Implement the 2001 Roadless Area Conservation Rule and Protect Ancient Forests – Protecting America’s Wild Legacy is a great benefit to us and our children. The wild forests remaining in the National Forest System are less than 1% of the land base of the United States. These areas provide the best remaining forest habitat in the country for fish and wildlife, the drinking water for over 3400 towns and cities and the most outstanding outdoor recreation in the nation. The wisest step to provide adequate budgets for federal land management agencies is to eliminate unnecessary and wasteful expenditures. Federal taxpayers do not want nor can they continue to afford to subsidize road building and sell trees at below-market prices. Developing even more of the nation’s best fish and wildlife habitat on which subsidized logging practices can occur is irresponsible. Implementing the 2001 Roadless Area Conservation Rule will protect these wild forests and minimize the burden on taxpayers. Congress should move to enact this rule and work to protect our scarce old growth forests.

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